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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,295	04/05/2006	Eugene A. Moskal	PHLV0650-009	7015

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VENABLE, CAMPILLO, LOGAN & MEANEY, P.C.
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EXAMINER

JOYNER, KEVIN

ART UNIT	PAPER NUMBER
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1797

NOTIFICATION DATE	DELIVERY MODE
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07/02/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@vclmlaw.com

Office Action Summary	Application No. 10/595,295	Applicant(s) MOSKAL ET AL.	
	Examiner KEVIN C. JOYNER	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 1-22 and 34-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group III, claims 23-33 in the reply filed on May 4, 2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 1-22 and 34-55 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 4, 2009.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 23, 24, 25, 26, 29, 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Bodine (U.S. Patent No. 4,885,098).

Bodine discloses an apparatus for treating a batch contaminated resource (column 1, lines 10-50) comprising:

At least one transducer in a transducer housing (22) and a container (14) having an inside and outside wherein the transducer housing is inside the container (Figure 2A); and

An energy source (15) coupled to the at least one transducer for energizing the at least one transducer that is capable of producing ultrasonic pressure waves in the contaminated resource (column 3, lines 1-68; column 4, lines 1-45). More specifically, The Manual of Patent Examining Procedures specifically states that, “while the features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function” as well as, “a claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior art apparatus teaches all the structural limitations of the claim.” (MPEP 2114 [R-1]). As such, the apparatus as presented in claim 23 is not patentably distinct from the apparatus of Bodine with regard to the production of ultrasonic pressure waves.

The reference continues to disclose that the transducer housing (22) further comprises a body having a body first open end with a top coupled to said first open end and a body second open with bottom adaptively coupled to the body second open end (Figures 2A & 2B). Concerning claim 25, Bodine also discloses that the at least one transducer housing is coupled to a transducer shaft (column 5, lines 30-36) for varying the position of the at least one transducer within the container (column 5, lines 19-35).

With regard to claim 26, the container of Bodine further comprises a cylinder (Figures 1-2) having an open end and a cap for coupling to the open end (Figure 2A).

With regard to claim 29, Bodine also discloses that the apparatus further comprises an oxidizing agent introducing device capable of introducing an oxidizing agent as a solution (column 4, lines 63-68). Concerning claims 32 and 33, the reference also discloses that the apparatus further comprises a pump to remove the solution after treatment (column 6, lines 16-20).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodine (U.S. Patent No. 4,885,098) in view of Shibata (U.S. Patent No. 6,416,525).

Bodine is relied upon as set forth above, wherein the reference continues to disclose that the cap includes a cap opening sufficient to allow the transducer shaft to pass (opening for portion of shaft 15a as shown in Figure 2A) and a sealing device located between the transducer shaft, the cap and the cylinder (column 5, lines 32-37). Bodine does not appear to disclose that the sealing device produces a liquid resistant seal with a stopper between the shaft, cap and cylinder. Shibata discloses an apparatus for treating a contaminated resource comprising a container with at least one

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transducer in a transducer housing inside said container (Figures 2 and 3) as well as an energy source coupled to the transducer for producing ultrasonic pressure waves (column 4, lines 55-65). The reference continues to disclose a cap (38) with an opening to support a transducer shaft (35) as well as a cylinder (23), and further discloses a stopper sealing means (36 & 37) provided between said shaft, cap, and cylinder in order to produce a liquid resistant and airtight seal and additionally prevent the materials from slipping (column 5, lines 35-55). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to utilize a stopper sealing device in the apparatus of Bodine in order to produce a liquid resistant and airtight seal between the transducer shaft, the cap, and the cylinder and further to prevent the materials from slipping as exemplified by Shibata.

7. Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodine (U.S. Patent No. 4,885,098) in view of Huber et al. (U.S. Publication No. 2005/0034842).

Bodine is relied upon as set forth above, wherein Bodine discloses that the batch contaminated resource apparatus comprises a pumping system with a fluid inlet and outlet as well as a gas inlet in a reactor, but does not appear to specifically disclose that the oxidizing agent introducing device comprises an impermeable material and inlets, and a semi-permeable material between part of the batch contaminated resource boundary and the impermeable material. Huber discloses a reactor device (300) capable of being utilized against a batch contaminated resource comprising a fluid inlet

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(322) and outlet (324) as well as an oxidizing agent introducing device with a gas inlet (paragraphs 122-126). The reference continues to disclose that the apparatus comprises an impermeable material (358; paragraph 120) and a semi-permeable material (364) between part of the batch contaminated resource boundary and the impermeable material (paragraph 123) in order to prevent toxic gases from being vented to the ambient atmosphere (paragraph 122). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Bodine to include the closed loop oxidizing introducing device including an impermeable material and a semi-permeable material between part of the batch contaminated resource boundary and the impermeable material in order to prevent toxic gases from being vented to the ambient atmosphere as exemplified by Huber.

Double Patenting

8. Claims 23-26, 29, 32 and 33 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,630,073 in view of Bodine (U.S. Patent No. 4,885,098).

Concerning claim 23, all of the limitations of claim 23 of the instant application are met with respect to claims 1-19 of '073 except for the energy source coupled to the transducer. However, Bodine discloses this limitation as set forth above, in order to operate said ultrasonic transducer. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify '073 with an energy source coupled to the ultrasonic transducer in order to operate transducer as exemplified by Bodine.

With regard to claims 24-26, '073 does not disclose the specifics concerning the transducer housing or the container. Nonetheless, as set forth above, Bodine continues to disclose that said housing further comprises a body with a top coupled to a first open end and a bottom coupled to the second open end of the body as well as a shaft coupled to the housing for varying the position of the transducer; and that the container comprises a cylinder with a cap coupled to the open end of the container. Such a configuration provides an optimal setting for the decontamination of contaminated resource. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to utilize a housing that further comprises a body with a top coupled to a first open end and a bottom coupled to the second open end of the body as well as a shaft coupled to the housing for varying the position of the transducer; and a container that comprises a cylinder with a cap coupled to the open end of the container in '073 in order to provide an optimal setting for the decontamination of contaminated resource as exemplified by Bodine. With regard to claim 29, the limitation is met with respect to claims 1-19 of U.S. Patent No. 6,630,073).

Concerning claims 32 and 33, '073 does not appear to disclose a pressure reducing pump that removes solution after treatment. However, Bodine continues to disclose a pressure reducing pump that removes solution after treatment in order to pump liquids into and out of the contaminated resource for decontamination treatment. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify '073 to include a pressure reducing pump that removes solution after

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treatment in order to pump liquids into and out of the contaminated resource for decontamination treatment as exemplified by Bodine.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN C. JOYNER whose telephone number is (571)272-2709. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCJ

/Sean E Conley/

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